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8 Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO
(Including SAN FRANCISCO DEPARTMENT OF BUILDING
INSPECTION, SAN FRANCISCO BUILDING
INSPECTION COMMISSION, and
SAN FRANCISCO PLANNING DEPARTMENT)

12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 OAKLAND DIVISION

15 REGAN CARROLL TRUST, Regan
Carroll, Trustee,

16 Plaintiff,

17 vs.

18 CITY AND COUNTY OF SAN
FRANCISCO, SAN FRANCISCO
DEPARTMENT OF BUILDING
INSPECTION, SAN FRANCISCO
BUILDING INSPECTION
COMMISSION, and SAN FRANCISCO
PLANNING DEPARTMENT,

22 Defendants.

Case No. C-07-2577 SBA

**CITY'S NOTICE OF MOTION TO
DISMISS FOR LACK OF
JURISDICTION AND FAILURE TO
STATE A CLAIM AND, IN THE
ALTERNATIVE, FOR SUMMARY
JUDGMENT
[FRCP 12(B)(1); 12(B)(6); 56]**

Hearing Date: December 11, 2007
Time: 1:00 p.m.
Place: Courtroom 3, 3rd Floor
Trial Date: TBA

25 TO PLAINTIFF AND ITS ATTORNEY OF RECORD:

27 PLEASE TAKE NOTICE that on December 11, 2007 at 1:00 p.m., or as soon thereafter as the

28 matter may be heard in the above-entitled court, located at 1301 Clay Street, Courtroom 3, 3rd Floor,
CITY'S NOTICE OF MOTION TO DISMISS
CASE NO. C-07-2577 SBA

Oakland, California, Defendant City and County of San Francisco (sued herein as the City and County of San Francisco, San Francisco Department of Building Inspection, San Francisco Building Inspection Commission, and San Francisco Planning Department; collectively "City") will move the court to dismiss the action pursuant to FRCP 12(b)(1), 12 (b)(6) or, in the alternative, for summary judgment pursuant to FRCP 56. This motion will be made on the grounds that Plaintiff's complaint fails to state a claim for which relief can be granted, and some or all of the claims set forth in the complaint are not ripe for review.

Specifically, the complaint fails to state a claim for relief pursuant to 42 U.S.C. §1983 in that Plaintiff has failed to allege facts establishing (1) acts by the defendants (2) under color of state law (3) depriv[ed][it] of federal rights, privileges or immunities [and] (4) caus[ed][it] damage. Moreover, the court must apply the highly deferential "rational basis" standard of review to Plaintiff's claims. Because the proposed project did not comply with existing local law at the time Plaintiff sought its issuance, the City's refusal to issue the requested permit was rationally based.

Plaintiff's claims are also barred on the basis of *res judicata* and collateral estoppel, because Plaintiff failed to seek state judicial relief from the administrative decisions it now challenges, and those determinations must now be accorded preclusive effect. In addition, Plaintiff's §1983 claims are barred by the statute of limitations, since those claims are premised on alleged actions by the City that Plaintiff claims occurred prior to June, 2001.

Alternatively, the complaint sets forth claims which are not ripe for review, since the Complaint does not allege that the City has taken final action with respect to Plaintiff's building permit application. In fact, at Plaintiff's request, the City's Board of Appeals continued the hearing of Plaintiff's claims relating to the City's denial of a building permit for one year, and has taken no further action thereon.

1 Dated: October 9, 2007
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6 By: 
7 KRISTEN A. JENSEN

8 Attorneys for Defendant
9 CITY AND COUNTY OF SAN FRANCISCO
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